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No. 934

In the Supreme Court of the United States

OCTOBER TERM, 1946

TOM C. CLARK, ATTORNEY GENERAL, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, PETITIONER

v.

UEBERSEE FINANZ-KORPORATION, A. G.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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v.

UEBERSEE FINANZ-KORPORATION, A. G.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

The Acting Solicitor General, on behalf of Tom C. Clark, Attorney General, as Successor to the Alien Property Custodian, prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the District of Columbia entered in the above-entitled case on October 21, 1946.

OPINION BELOW

The opinion of the Court of Appeals for the District of Columbia (R. 10) has not yet been reported. The district court rendered no opinion.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia was entered on October 21,

1946 (R. 15). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, in a suit under Section 9 (a) of the Trading With the Enemy Act, as amended, a "foreign national," within the meaning of Section 5 (b) of that Act, may secure the return of property vested by the Alien Property Custodian.

STATUTES INVOLVED

The relevant provisions of the Trading With the Enemy Act, as amended by the First War Powers Act, 1941, are set forth in the Appendix, *infra*, pp. 21–30.

STATEMENT

By a series of vesting orders issued in June and July 1942, the Alien Property Custodian vested in himself certain shares of stock and interests in contracts.[1] On October 25, 1944, Uebersee Finanz-Korporation, A. G., filed in the District Court for the District of Columbia its complaint under Section 9 (a) of the Trading With the Enemy Act, asserting that at the time

[1] The vesting orders are: Vesting Order No. 14, June 4, 1942, 7 F. R. 4399; Amendatory and Supplemental Order No. 1 to Vesting Order No. 14, July 11, 1944, 9 F. R. 8083; Vesting Order No. 17, June 4, 1942, 7 F. R. 4402, amended August 6, 1942, 7 F. R. 6199; Vesting Order No. 18, June 4, 1942, 7 F. R. 4402; Vesting Order No. 19, June 4, 1942, 7 F. R. 4403; Vesting Order No. 36, June 30, 1942, 7 F. R. 5078; Vesting Order No. 51, July 10, 1942, 7 F. R. 6503.

of vesting it was the owner of the vested properties and praying for their return (R. 2). The complaint alleged that the plaintiff was a corporation organized under the laws of Switzerland and a citizen of Switzerland; it denied that the plaintiff was either an "enemy" or "ally of enemy" within the meaning of the Trading With the Enemy Act (R. 6). The defendant moved to dismiss the complaint on the ground that it showed on its face that the plaintiff was a foreign national whose property the Alien Property Custodian was authorized to vest by Section 5 (b) of the Trading With the Enemy Act, as amended (R. 7). The district court granted the motion and dismissed the action (R. 8). The Court of Appeals for the District of Columbia, one judge dissenting, reversed and remanded the cause for trial, holding that Section 5 (b) did not authorize the retention of property of foreign nationals, but merely the initial vesting of such property subject to a duty to return upon suit by anyone not an enemy or ally of enemy, and that unless Section 5 (b) were so construed "grave doubts as to the constitutionality of the law" would arise (R. 10).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals for the District of Columbia erred:

1. In holding that Section 5 (b) of the Trading With the Enemy Act, as amended, did not

authorize the retention and use in the interest of the United States of property of a national of a foreign country vested by the Alien Property Custodian;

2. In holding that the amendments made to Section 5 (b) by the First War Powers Act, 1941, were designed merely to eliminate the procedural requirements of an investigation and finding of enemy ownership as a preliminary to seizure, and had no substantive effect on the type of property subjected to seizure and retention;

3. In holding that a foreign national whose property has been vested might not bring a suit for just compensation and thereby secure full protection of any constitutional rights;

4. In reversing the judgment of the district court.

REASONS FOR GRANTING THE WRIT

1. As it existed during World War I, Section 7 (c) of the Trading With the Enemy Act, 40 Stat. 411, 418, as amended, 50 U. S. C. App. 7 (c), authorized the seizure of property of "an enemy or ally of enemy." It further provided that "the sole relief and remedy of any person having any claim to any money or other property" transferred to or seized by the Custodian "shall be that provided by the terms of this Act." Section 9 (a) of the Act, 40 Stat. 419, as amended, 50 U. S. C. App. 9 (a), authorized "any person not an enemy or ally of enemy" to bring a suit in

equity to "establish any right, title or interest which he may have" in any property held by the Alien Property Custodian. If he established such an interest, the court was directed to order the payment or transfer to him of the "money or other property * * * or the interest therein to which the court shall determine said claimant is entitled."

By the First War Powers Act, c. 593, 55 Stat. 838, 50 U. S. C. App. (Supp. V) 5 (b), enacted on December 18, 1941, Congress amended Section 5 (b) of the Trading With the Enemy Act, so as to authorize the vesting of "any property or interest of *any foreign country or national thereof*" [italics supplied] and provided that the property so vested should be "held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States." This enlargement of the type of property subject to the vesting power from "enemy" property to "foreign" property was accompanied by no amendments addressed to the remedies provided by the Act, Congress leaving Sections 7 (c) and 9 (a) unchanged.

The 1941 amendment to Section 5 (b), adopted a few days after the entry of the United States into the war, thus worked a substantive enlargement of the seizure power. The court below has conceded that in using the phrase "any foreign country or national thereof" Congress subjected

to seizure all foreign property and not merely property of enemies or allies of enemies. (R. 11).[2] And in directing that any property vested from a foreign country or national thereof be "held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States," Congress plainly authorized that such property be retained by the Custodian and be made available for affirmative use in the national interest. *Markham* v. *Cabell*, 326 U. S. 404, 412. This purpose was expressly stated in both of the Committee Reports accompanying the bill which amended Section 5 (b). Thus it was stated in S. Rep. No. 911, 77th Cong., 1st Sess., p. 2, that:

> The existing foreign property control regulations (popularly known as "freezing control") have permitted the Government to prevent and regulate transactions relating to foreign property which are prejudicial to the interests of the United States. While existing law permits the

[2] This concession was required by the plain and natural meaning of the phrase; by the use of the phrase but a few lines earlier in the amendment to Section 5 (b) to define regulatory powers which could not conceivably be construed as being limited to enemy or ally of enemy property; and by the well-known use of the substantially identical phrase "any foreign state or a national thereof" in the Public Resolution of May 7, 1940, 54 Stat. 179, under the authority of which the property of thirty-four foreign countries and their nationals had been subjected to "freezing" controls at the time of passage of the First War Powers Act, 1941 (see Executive Order No. 8785, June 14, 1941, 6 F. R. 2897).

> Government to prevent transactions, *it is now necessary for the Government to be able to affirmatively compel the use and application of foreign property in a manner consistent with the interests of the United States.* [Italics supplied].

To the same effect see H. Rep. No. 1507, 77th Cong., 1st Sess., p. 3.

There were strong reasons why the Congress, desiring to confer "a flexibility of control" and to avoid "the rigidity and inflexibility which characterized the alien property custodian law enacted during the last war" (H. Rep. No. 1507, 77th Cong., 1st Sess., p. 3), should have deemed inadequate a vesting power limited to property which could be proved to be owned by enemies or allies of enemies, as those terms were defined in the 1917 Act. When the First War Powers Act, 1941, was enacted, it was notorious that Germany and other Axis countries had developed a multitude of techniques for concealing actual enemy ownership of ostensibly neutral property, and for exercising control of property which was not enemy owned through such means as options, contractual relationships, control of vital technical information, and loyalty of key personnel. See United States Treasury Department, *Administration of the Wartime Financial and Property Controls of the United States Government* (1942), 29–31; Hearings before a Subcommittee of the Senate Committee on Military Affairs (Kilgore

Committee) pursuant to S. Res. 107 and 146, 79th Cong., 1st Sess., June–Dec., 1945, *passim*. Since the definitions of "enemy" and "ally of enemy" (see Appendix, pp. 21–22, *infra*) in the 1917 Act were too narrow to comprehend all persons engaged in such cloaking activities, Congress had good grounds for extending the vesting power as it did in order to avert all possibility of establishing an immunity, on technical grounds, for property of disguised or indirect hostile ownership. Compare *Behn, Meyer & Co.* v. *Miller*, 266 U. S. 457, with *Draeger Shipping Co.* v. *Crowley*, 55 F. Supp. 906 (S. D. N. Y.).

Moreover, in granting the power to vest the property of all foreign nationals, Congress did not make the exercise of that power mandatory. In practice, the Custodian has in general exercised the vesting power only where, as in this case,[1] he had reason to believe that the property was enemy owned or controlled, or where the vesting was deemed advisable to conserve the property of a resident of enemy-occupied territory. See H. Rep. No. 2398, 79th Cong., 2d Sess., p. 4. Where that belief is shown to be unfounded or the reasons which motivated the vesting have disappeared, the Custodian is now empowered, as a result of the recent enactment of Pub. L. No.

[1] The Custodian has found that the respondent, although ostensibly neutral, was controlled by Germans. See Vesting Order No. 51 and Amendatory and Supplemental Order No. 1 to Vesting Order No. 14, *supra*, note 1.

322, 79th Cong., 2d Sess., March 8, 1946, to return the property, upon a finding that return is in the interest of the United States. See Appendix, pp. 26–29, *infra*. To go farther, however, as did the Court of Appeals in this case, and compel return if the property is not found to be enemy property within the definition of the 1917 Act, even though return is determined by the Executive Branch not to be in the public interest, would destroy the flexibility which Congress deemed necessary to meet the conditions of this war, and would thus negate the major substantive change in the vesting power which Congress plainly intended to enact.*

In an effort to avoid nullification of the 1941 amendment, the Court of Appeals has imputed to it a procedural function designed in the Court's view to facilitate prompt immobilization of all property possibly owned by enemies. The Court suggests that under Section 7 (c), property could be seized only "after investigation" and upon a finding of enemy ownership, and that Section 5 (b) had the effect of eliminating these requirements as a prerequisite to the initial vesting, while leaving the property subject to a duty to return upon a showing that it was not enemy

* Denial to a foreign national of the right to compel return by suit under Section 9 (a) does not leave him remediless in respect of any rights he may have under the Constitution. To the extent that the Constitution requires it, relief of complete adequacy is available by suit for just compensation under the Tucker Act. See pp. 13–16, *infra*.

owned. There is no suggestion in the entire statutory history of the First War Powers Act that Congress was concerned with these procedural requirements of an investigation and a formal finding of the facts. Nor is there anything in the history of the Trading With the Enemy Act as applied during and after the first World War to suggest that either requirement imposed a serious administrative burden calling for Congressional alleviation.[6] And, in any event,

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[6] The courts have emphasized that Section 7 (c) authorized the seizure, upon a summary ex parte determination, of property which was "supposed" or "believed" to be enemy owned. *Central Union Trust Co.* v. *Garvan*, 254 U. S. 554, 566; *Stoehr* v. *Wallace*, 255 U. S. 239, 245; *Commercial Trust Co.* v. *Miller*, 262 U. S. 51; *Yakus* v. *United States*, 321 U. S. 414, 443. In proceedings to enforce the Custodian's demand that property be transferred to him, his recital that an investigation had been made was conclusive and his findings were unreviewable. *Garvan* v. *Commercial Trust Co.*, 275 Fed. 841, 844 (D. N. J.), affirmed, *sub nom. Commercial Trust Co.* v. *Miller*, 281 Fed. 804 (C. C. A. 3), affirmed, 262 U. S. 51. *Cf.* 262 U. S. at 55. Nor did the character of his investigation and the evidentiary support for his findings assume any significance in a suit under Section 9 (a). The courts had held rather that the decision in such a suit was "unembarrassed by the precedent executive determination." *Stoehr* v. *Wallace*, *supra*, 246; *Commercial Trust Co.* v. *Miller*, 262 U. S. 51, 53.

In fact the Custodian has not thought it important to escape either the requirement of investigation or of findings. See Annual Report, Office of Alien Property Custodian, March 11, 1942, to June 30, 1943, p. 22. His vesting orders typically recite the fact of an investigation and contain detailed findings of the ownership of the property by a national of either a foreign country or a designated enemy country. See, e. g., the vesting orders involved in this suit, note 1, *supra*.

if the Congressional purpose had been merely to ensure the prompt immobilization of all foreign property pending judicial determination of non-enemy ownership, the vesting provision of Section 5 (b) would have been superfluous, for such immobilization of foreign property could be fully accomplished through exercise of the freezing controls conferred by other provisions of Section 5 (b).

2. The Court of Appeals thought that such a nugatory construction of Section 5 (b) was required in order to avoid internal conflict with Section 9 (a), which authorizes "any person, not an enemy, or ally of enemy" to bring suit to establish his title to property held by the Custodian. If it were impossible to reconcile this provision of Section 9 (a) with the policy of Section 5 (b), Section 5 (b) as the later enactment should be controlling, and Section 9 (a) should be deemed to have been repealed to the extent necessary to give effect to the more recent expression of Congressional purpose. But we think there is no such collision. Section 9 (a) authorizes the court to order return only of that property to which it "shall determine said claimant is entitled." Since Section 5 (b) expressly authorizes the vesting and retention of property of a national of a foreign country, and the Custodian's act of vesting operates to cut off the title of a foreign national in the vested property (*cf. Cummings* v. *Deutsche Bank*, 300 U. S. 115,

120–121), such a national would thus be unable to "establish any right, title or interest" in the property and would not be "entitled" to have it returned. See *Silesian-American Corporation* v. *Markham*, 156 F. 2d 793, 797 (C. C. A. 2), certiorari denied, No. 346, this Term, October 14, 1946. Hence if the language of Section 9 (a) limiting returns to property to which the claimant is "entitled" is read naturally and with regard for its organic relationship to Section 5 (b), it bars a court of equity from returning the property to a foreign national.

Thus construed, Section 9 (a) continues to perform the function for which it was designed when first enacted during World War I—that of affording a judicial determination of whether the property seized in a particular case was the type whose seizure and retention Congress had authorized. During World War I the authority granted was limited to enemy property. With its expansion to include foreign property by the 1941 amendments to Section 5 (b), there necessarily followed a corresponding narrowing of the type of property which could be returned by court order pursuant to Section 9 (a) because not within the scope of the stated seizure power. To construe Section 9 (a) as the complement of the stated seizure power, so that as the latter is enlarged the class of property which may be recovered is narrowed, is not to "nullify" Section 9 (a) as the Court of Appeals suggests, but is

rather to give Section 9 (a) the scope which a due regard for its historic function in the scheme of the Act compels.

3. The Court of Appeals also deemed its interpretation of Section 5 (b) to be compelled in order to avoid "grave constitutional doubts." These doubts are, however, created by the Court; they arise only because of its holding that the remedy of Section 9 (a) is exclusive so that to deny it to foreign nationals would leave them without remedy. Ordinarily, the remedy of a suit for just compensation under the Tucker Act, Judicial Code §§ 24 (20), 145 (1), 28 U. S. C. 41 (20), 250 (1), is available to redress an *authorized* taking of property which is protected by the Fifth Amendment from uncompensated seizure. Such a taking is normally deemed to give rise to an implied promise of compensation upon which an action may be brought against the Government. *Yearsley* v. *Ross Construction Co.*, 309 U. S. 18, and cases cited. *Cf. Becker Steel Co.* v. *Cummings*, 296 U. S. 74, 79–80. The reasons which led the Court of Appeals to conclude that that remedy was not available here are not so compelling as to warrant a construction of the Act which denies all force to the substantive change intended by Congress in amending Section 5 (b).

The Court of Appeals rested its decision on this point on a provision of Section 7 (c) that "the

sole relief and remedy of any person having any claim to any money or other property" transferred to or seized by the Custodian "shall be that provided by the terms of this Act," and on certain decisions under the Act as it existed in World War I. This provision of Section 7 (c) appears on its face to be inapplicable to the claim of a foreign national for just compensation. Such a claim necessarily proceeds on the assumption that full and indefeasible title to the money or other property has passed to the United States, for only thus can the claimant show the "taking" which is the basis of his suit. It is therefore not a claim "to any money or other property" in the Custodian's hands, but a claim for pecuniary redress based on the premise that the specific money or property is beyond the reach of the claimant. For similar reasons, the decisions under the old Act that just compensation might not be recovered in the circumstances there presented (*Becker Steel Co.* v. *Cummings*, 95 F. 2d 319 (C. C. A. 2); *Pflueger* v. *United States*, 121 F. 2d 732, (App. D. C.) certiorari denied, 314 U. S. 617; *Escher* v. *United States*, 68 C. Cls. 473, certiorori denied, 281 U. S. 752) have little relevance. In all of those cases, the claimant could have, and in fact had, secured the return of his property or its proceeds by a proceeding under Section 9 (a); in denying additional relief

by way of just compensation they held in effect merely that the United States could not be regarded as the purchaser of property which it had returned, nor held liable as in tort for a purely possessory taking of property which the claimant could have recovered at any time by bringing suit under Section 9 (a). These decisions and the quoted provision of Section 7 (c) thus relate to property whose seizure and ultimate retention was not authorized by the Act, and for whose recovery an express statutory remedy was provided. Nothing in them would appear to preclude resort to the normal remedy, whenever the Constitution so requires, of a suit for just compensation to redress an authorized taking by the United States for which no other remedy is available.

Even if the compulsions of the language were clearer and Section 7 (c) had to be read as barring all remedy other than that of Section 9 (a), any resulting constitutional difficulties should be resolved in the manner which permits fullest realization of the purposes which Congress embodied in the First War Powers Act. This may be done by applying the normal presumption that Congress intended its declared policy to be effective (*cf. United States* v. *Powers*, 307 U. S. 214, 217; *Gemsco, Inc.* v. *Walling*, 324 U. S. 244, 255, 258), and by regarding Section 7 (c) as modified by Section 5 (b) to the extent necessary

to permit effectuation of the policy of the later-enacted Section.

4. The decision of the Court of Appeals is the first decision of an appellate court on the right of a foreign national to recover vested property by suit under Section 9 (a). The Circuit Court of Appeals for the Second Circuit has, however, squarely rejected one of the premises on which the opinion of the Court of Appeals in this case was based—the premise that to construe the Act as denying the remedy of return to a foreign national "would raise grave constitutional doubts." In *Silesian-American Corporation* v. *Markham*, 156 F. 2d 793, 797, certiorari denied, No. 346, this Term, October 14, 1946, the Circuit Court of Appeals for the Second Circuit held that a foreign national, if denied the remedy of return, could fully protect any constitutionally protected rights by a suit for just compensation. Judge Learned Hand, who spoke for the Court, therefore concluded that the Act was constitutional whichever view be adopted of the rights of a foreign national under Section 9 (a).

The decision of the Court of Appeals is in direct conflict with the decisions of two district courts, in addition to the District Court for the District of Columbia, that a foreign national may not recover under Section 9 (a). *Iki* v. *Crowley*, W. D. Wash., May 10, 1944, and on rehearing,

July 10, 1944;* *Hayden* v. *Crowley*, W. D. Wash., May 10, 1944, and on rehearing, July 10, 1944;* *Draeger Shipping Co.* v. *Crowley*, 49 F. Supp. 215, 219, 55 F. Supp. 906, 912–13, 914 (S. D. N. Y.). And in the *Silesian-American* case, *supra*, the Circuit Court of Appeals for the Second Circuit, although not expressly passing on the point, indicated its view that the result of the amendment to Section 5 (b) "may well be" to deny to a foreign national the remedy of return.

The holding of the Court of Appeals that the 1941 amendment to Section 5 (b) had only the narrow procedural function of eliminating the requirements of investigation and finding of enemy ownership as a prerequisite to the initial vesting, while leaving unaffected the duty to return to non-enemies, is inconsistent with the opin-

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* These cases were decided by Judge Black in identical unreported opinions. The opinion of Judge Black follows in full:

"After consideration of the very comprehensive briefs in behalf of each party which supplement the oral arguments which were submitted, and regardless of whether or not the complaint is or is not otherwise sufficient I am satisfied that it is essential and [sic] the plaintiff affirmatively allege that he is not a national of a foreign or enemy country. Such allegation is not now present.

"For such reason in any event the defendants' motion to dismiss should be granted.

"Order in harmony herewith may be presented, after notice.

"DATED May 10th, 1944."

ion of this Court in *Markham* v. *Cabell*, 326 U. S. 404. There this Court recognized that Section 5 (b) "gave a broader grant of authority to the Executive than had existed under the original Act," 326 U. S. at 411. Emphasizing the direction of Section 5 (b) that property vested from foreign nationals be "held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States," it spoke of "the new power granted the Executive by § 5 (b) to make any affirmative use of the property that the national interest in time of war might require," 326 U. S. at 412. This Court thus appears to have recognized that the 1941 amendment to Section 5 (b) effected a major substantive change in the Trading With the Enemy Act. And in sustaining the right of one who was neither an enemy nor a foreign national to recover a debt claim, it emphasized that that right was not "superseded by § 5 (b)" (326 U. S. at 413), because it was not "inconsistent with the new power granted the Executive by § 5 (b)" (326 U. S. at 412), and was "not shown to collide with § 5 (b)" (326 U. S. at 413). The opinion thus indicates that where such an inconsistency and such a collision does appear, it should be resolved, not by treating the later amendment as ineffective as the Court of Appeals has done in this case, but by giving full force to the clearly expressed policy of that amendment and treating

the older provisions of the Act as superseded to the extent necessary to avoid the collision.[1]

5. The question of the right of a foreign national to compel return of his property by a suit under Section 9 (a) is of fundamental importance in the administration of the Trading With the Enemy Act. It is presented in sixteen other pending suits relating to property of a value estimated at some 17 million dollars. In addition, resolution of the question will determine the course of a large number of claims to vested property which are anticipated but have not yet been filed. It is estimated by the Office of Alien Property that a total of some 86 mil-

[1] The Court of Appeals suggested (R. 13) that the recent failure of Congress to enact a proposed amendment to the Trading With the Enemy Act which would have expressly denied to foreign nationals the right of recovery by suit under Section 9 (a) indicated a Congressional intention to permit such recovery. The action of Congress in this respect does not support this conclusion. While the Report of the Senate Committee suggests that deletion of the proposed amendments from the bill which became Pub. L. No. 671, 79th Cong., 2d Sess., August 8, 1946, "preserved" the right of a friendly foreign national to recover his property by suit under Section 9 (a) (S. Rep. No. 1839, 79th Cong., 2d Sess., p. 2), the House Committee regarded the amendment as essentially declaratory of existing law, H. Rep. No. 2393, 79th Cong., 2d Sess., pp. 2–3, and Mr. Celler, Chairman of the House Subcommittee, in recommending the adoption of the bill as amended by the Senate, reiterated this view, stating that despite the deletion of the amendment, a foreign national could not under existing law secure judgment against the United States in a suit under Section 9 (a). 92 Cong. Rec. A–4805.

lion dollars worth of property may be affected by the decision.

If the decision below is sustained, the Government may be required to retain [8] all of this property pending the determination in protracted litigation of whether it is enemy owned. If it is reversed, the Government will be free to dispose of such property, while any constitutional rights will be protected by the availability of a suit for just compensation. As a result, a speedy reduction of the extent of the Government's custodial function and a return of a large number of important properties into the regular current of American business may be anticipated.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

GEORGE T. WASHINGTON,
Acting Solicitor General.

JANUARY 1947.

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[8] Section 9 (a) directs that the "money or property shall be retained in the custody of the Alien Property Custodian" pending the final outcome of the suit for return.

APPENDIX

Trading With the Enemy Act, c. 106, 40 Stat. 411, as amended (50 U. S. C. App. 1–31):

SEC. 2. That the word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

The words "ally of enemy," as used herein, shall be deemed to mean—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "ally of enemy."

* * * * * *

SEC. 5 [as amended by the First War Powers Act of 1941, c. 593, Sec. 301, 55 Stat. 839, 50 U. S. C. App., Supp. V, 5 (b)]:

* * * * * *

(b) (1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; * * * and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

* * * * *

SEC. 7 [as amended by the Deficiency Appropriation Act of Nov. 4, 1918, c. 201, Sec. 1, 40 Stat. 1020]:

* * * * * *

(c) If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.

* * * * * *

The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States.

* * * * * *

SEC. 9 (a) [as amended] That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district

court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

Sec. 32 (as added by Pub. L. No. 322, 79th Cong., 2d Sess., Mar. 8, 1946):

(a) The President, or such officer or agency as he may designate, may return any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof, whenever the President or such officer or agency shall determine—

(1) that the person who has filed a notice of claim for return, in such form as the President or such officer or agency may prescribe, was the owner of such property or interest immediately prior to its vesting in or transfer to the Alien Property Custodian, or is the legal representative (whether or not appointed by a court in the United States), or successor in interest by inheritance, devise, bequest, or operation of law, of such owner; and

(2) that such owner, and legal representative or successor in interest, if any, are not—

(A) the government of a nation with which the United States has at any time since December 7, 1941, been at war; or

(B) a corporation or association organized under the laws of such nation: *Provided,* That any property or interest or proceeds which, but for the provisions of this subdivision (B), might be returned under this section to any such corporation or association, may be returned to the owner or owners of all the stock of such corporation or of all the proprietary and beneficial interest in such association, if their ownership of such stock or proprietary and beneficial interest existed immediately prior to vesting in or transfer to the Alien Property Custodian and continuously thereafter to the date of such return (without regard to purported divestments or limitations of such ownership by any government referred to in subdivision (A) hereof) and if such ownership was by one or more citizens of the United States or by one or more corporations organized

under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia: *Provided further,* That such owner or owners shall succeed to those obligations, limited in aggregate amount to the value of such property or interest or proceeds, which are lawfully assertible against the corporation or association by persons not ineligible to receive a return under this section; or

(C) an individual voluntarily resident at any time since December 7, 1941, within the territory of such nation, other than a citizen of the United States or a diplomatic or consular officer of a nation with which the United States has not at any time since December 7, 1941, been at war; or

(D) an individual who was at any time after December 7, 1941, a citizen or subject of a nation with which the United States has at any time since December 7, 1941, been at war, and who on or after December 7, 1941, and prior to the date of the enactment of this section, was present (other than in the service of the United States) in the territory of such nation or in any territory occupied by the military or naval forces thereof or engaged in any business in any such territory; or

(E) a foreign corporation or association which at any time after December 7, 1941, was controlled or 50 per centum or more of the stock of which was owned by any person or persons ineligible to receive a return under subdivisions (A), (B), (C), or (D) hereof: *Provided,* That notwithstanding the provisions of this subdivi-

sion (E), return may be made to a corporation or association so controlled or owned, if such corporation or association was organized under the laws of a nation any of whose territory was occupied by the military or naval forces of any nation with which the United States has at any time since December 7, 1941, been at war, and if such control or ownership arose after March 1, 1938, as an incident to such occupation and was terminated prior to the enactment of this section; and

(3) that the property or interest claimed, or the net proceeds of which are claimed, was not at any time after September 1, 1939, held or used, by or with the assent of the person who was the owner thereof immediately prior to vesting in or transfer to the Alien Property Custodian, pursuant to any arrangement to conceal any property or interest within the United States of any person ineligible to receive a return under subsection (a) (2) hereof;

(4) that the Alien Property Custodian has no actual or potential liability under the Renegotiation Act or the Act of October 31, 1942 (56 Stat. 1013; 35 U. S. C. 89–96), in respect of the property or interest or proceeds to be returned and that the claimant and his predecessor in interest, if any, have no actual or potential liability of any kind under the Renegotiation Act or the said Act of October 31, 1942; or in the alternative that the claimant has provided security or undertakings adequate to assure satisfaction of all such liabilities or that property or interest or proceeds to be retained by the Alien Property Custodian are adequate therefor; and

(5) that such return is in the interest of the United States.

Tucker Act, Judicial Code, § 24 (20), § 145 (1); 28 U. S. C. 41 (20), § 250 (1):

SEC. 24:

The district courts shall have original jurisdiction as follows:

* * * * *

(20) Suits against United States.

Twentieth. Concurrent with the Court of Claims, of all claims not exceeding $10,000 founded upon the Constitution of the United States or any law of Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the Government of the United States * * *.

SEC. 145:

The Court of Claims shall have jurisdiction to hear and determine the following matters:

(1) Claims against United States.

First. All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an executive department, upon any contract, express or implied, with the Government of the United States * * *.

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